

Message Text

UNCLASSIFIED

PAGE 01 BONN 02156 01 OF 02 071554Z

50

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 SEC-01 AID-05 CEA-01 CIAE-00

COME-00 EA-10 FRB-01 INR-07 IO-10 NEA-09 NSAE-00

RSC-01 OPIC-06 SP-02 TRSE-00 CIEP-02 LAB-04 SIL-01

OMB-01 JUSE-00 L-02 PA-02 USIA-15 PRS-01 /101 W

----- 069216

R 071643Z FEB 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 7819

UNCLAS SECTION 01 OF 02 BONN 02156

PASS SEC AND TREASURY

E.O. 11652: N/A

TAGS: EFIN, GW

SUBJECT: FOREIGN ACCESS TO U.S. SECURITIES MARKET:

GERMAN GOVERNMENT COMMENTS ON STANDARDS OF
REGISTRATION UNDER THE INVESTMENT COMPANY
ACT OF 1940

REF: STATE A-9155, DECEMBER 13, 1974

1. SUMMARY. THE GERMAN GOVERNMENT HAS MADE AVAILABLE TO THE EMBASSY A COPY OF THE COMMENTS IT WILL BE SENDING DIRECTLY TO THE SEC IN RESPONSE TO SEC PRESS RELEASE 8596 ON ISSUES CONCERNING STANDARDS FOR PERMITTING FOREIGN INVESTMENT COMPANIES TO REGISTER UNDER THE INVESTMENT COMPANY ACT OF 1940. IN ITS COMMENTS THE FEDERAL GOVERNMENT STRESSES ITS HOPE THAT DECISIONS CONCERNING THE ADMISSION OF FOREIGN INVESTMENT COMPANIES IN THE UNITED STATES WILL BE MADE IN THE SAME SPIRIT IN WHICH THE GERMAN AUTHORITIES FACILITATED PERMISSION FOR US INVESTMENT COMPANIES TO SELL THEIR SHARES IN THE FEDERAL REPUBLIC. WE HAVE SUMMARIZED BELOW THE MAIN POINTS
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 BONN 02156 01 OF 02 071554Z

IN THE GERMAN MEMORANDUM. END SUMMARY

2. THE FEDERAL GOVERNMENT RECALLS THAT IF THE SALE BY FOREIGN INVESTMENT COMPANIES IN GERMANY HAD BEEN MADE SUBJECT TO THE EXACT CONDITIONS LAID DOWN IN THE LAW GOVERNING THE SALE OF DOMESTIC GERMAN INVESTMENT COMPANIES, THIS WOULD HAVE EXCLUDED PRACTICALLY ALL FOREIGN FUNDS FROM THE GERMAN MARKET. FOR THIS REASON THE FEDERAL REPUBLIC IN 1969 ENACTED A SPECIAL LAW DEALING WITH SALES BY FOREIGN INVESTMENT COMPANIES. AMERICAN COMPANIES HAD DIFFICULTY IN COMPLYING EVEN WITH THIS LAW . THESE DIFFICULTIES WERE OVERCOME IN LONG NEGOTIATIONS BETWEEN THE GERMAN AUTHORITIES, THE SEC AND THE INVESTMENT COMPANY INSTITUTE DURING WHICH THE GERMAN AUTHORITIES ADOPTED A VERY FORTHCOMING POSITION.

3. THE GERMAN AUTHORITIES BELIEVE THAT GERMAN REGULATIONS AND CONTROLS PROVIDE FOR INVESTORS IN THE GERMAN FUNDS A DEGREE OF PROTECTION AND SAFETY WHICH IS EQUIVALENT TO THAT GIVEN FOR AMERICAN FUNDS BY AMERICAN REGULATIONS AND HOPE THAT THE SEC WILL GIVE DUE WEIGHT TO THIS FACT IN THE SAME MANNER IN WHICH THE GERMAN AUTHORITIES DID IN LICENSING OF US FUNDS. THE GERMAN REGULATIONS ALSO COMPLY WITH THE OECD GUIDELINES. GERMAN FUNDS, HOWEVER, ARE NOT CONSTRUCTED ON THE AMERICAN LEGAL MODEL AND INVESTORS IN THE FUNDS THEREFORE CANNOT BE GIVEN VOTING RIGHTS TO ELECT DIRECTORS, ETC. INSTEAD THE PROTECTION OF THE INVESTOR IS PROVIDED BY OTHER MEANS.

4. THE GERMAN GOVERNMENT DOES NOT BELIEVE THAT IT WOULD BE FEASIBLE TO REQUIRE GERMAN INVESTMENT COMPANIES SELLING IN THE US TO COMPLY FULLY WITH BOOKKEEPING AND VALUATION REQUIREMENTS OF THE AMERICAN ACT SINCE THESE IN SOME ASPECTS ARE LIKELY TO BE CONTRARY TO GERMAN REQUIREMENTS WITH WHICH THESE COMPANIES ALSO HAVE TO COMPLY. SAFEGUARDS AGAINST THE OVER-REACHING BY AFFILIATED PERSONS PROVIDED BY SECTION L7 OF THE AMERICAN ACT ARE PROVIDED FOR GERMAN COMPANIES BY PARAGRAPH 5 OF THE KAGG WHICH WHILE NOT UNCLASSIFIED

UNCLASSIFIED

PAGE 03 BONN 02156 01 OF 02 071554Z

IDENTICAL IN THE VIEW OF THE GERMAN GOVERNMENT DOES PROVIDE EQUIVALENT PROTECTION.

5. THE FEDERAL GOVERNMENT BELIEVES THAT IT WOULD BE DIFFICULT TO FIND A SOLUTION ALONG THE LINES ENVISAGED BY THE SEC FOR THE SURVEILLANCE BY THE AMERICAN AUTHORITIES OF FOREIGN INVESTMENT FUNDS IN THEIR FOREIGN DOMICILE. IT SUGGESTSTHAT CONFLICTS BETWEEN

THE DIFFERENT LEGAL SYSTEMS MIGHT BE AVOIDED IF THE
AMERICAN SURVEILLANCE LIMITS ITSELF TO THE METHODS BY
WHICH THE FOREIGN FUNDS ARE SOLD IN THE US IN THE
SAME MANNER AS THE GERMAN FOREIGN INVESTMENT COMPANY
LAW DOES.

UNCLASSIFIED

NNN

UNCLASSIFIED

PAGE 01 BONN 02156 02 OF 02 071554Z

50

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 SEC-01 AID-05 CEA-01 CIAE-00

COME-00 EA-10 FRB-01 INR-07 IO-10 NEA-09 NSAE-00

RSC-01 OPIC-06 SP-02 TRSE-00 CIEP-02 LAB-04 SIL-01

OMB-01 JUSE-00 L-02 PA-02 USIA-15 PRS-01 /101 W

----- 069226

R 071643Z FEB 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 7820

UNCLAS SECTION 02 OF 02 BONN 02156

6. THE FEDERAL GOVERNMENT POINTS OUT THAT ACCORDING
TO GERMAN LAW IT WOULD NOT BE PERMISSIBLE FOR A
GERMAN INVESTMENT COMPANY TO HOLD PART OF ITS CASH
ASSETS WITH AN AMERICAN BANK AND THAT THE HOLDING OF
SECURITIES IN THE US IS ONLY PERMISSIBLE WITHIN STRICT
LIMITS. THE GERMAN GOVERNMENT IN THIS CONNECTION ALSO
POINTS OUT THAT IN ITS FOREIGN INVESTMENT COMPANY LAW
IT ABSTAINED FROM REQUIRING FOREIGN FUNDS TO USE A
GERMAN CUSTODIAN BANK. THE GERMAN GOVERNMENT QUESTIONS
THE USEFULNESS OF REQUIRING FOREIGN INVESTMENT COMPANIES
TO HAVE A CERTAIN NUMBER OF AMERICAN CITIZENS AS
OFFICERS OR DIRECTORS BECAUSE THESE WOULD IN ALL
LIKELIHOOD NOT BE IN POSITION TO EFFECTIVELY SUPERVISE
THE COMPANIES OPERATING WITHIN THE FRAMEWORK OF

GERMAN LAWS AND CONDITIONS. THE GERMAN GOVERNMENT BELIEVES THAT IT IS NOT POSSIBLE TO AVOID FOREIGN EXCHANGE RESTRICTIONS FOR US CITIZENS WHO BUY SHARES IN FOREIGN INVESTMENT COMPANIES. GERMAN INVESTORS IN FOREIGN INVESTMENT COMPANIES ALSO HAVE TO BEAR THE RISKS INHERENT IN INTERNATIONAL CAPITAL MOVEMENTS. THE INVESTMENT COMPANIES COULD BE REQUIRED TO POINT
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 BONN 02156 02 OF 02 071554Z

THIS RISK OUT, HOWEVER, IN THEIR PROSPECTUS.

7. THE GERMAN GOVERNMENT DOES NOT BELIEVE THAT AMERICAN INVESTMENT COMPANIES WOULD BE UNFAVORABLY DISADVANTAGED IF FOREIGN INVESTMENT COMPANIES SHOULD BE ALLOWED TO SELL IN THE UNITED STATES WITHOUT HAVING TO COMPLY FULLY WITH THE AMERICAN ACT. IT BELIEVES THAT THE SALES BY FOREIGN INVESTMENT COMPANIES WOULD NOT CONSTITUTE A "MINUS" FOR THE AMERICAN COMPANIES BUT RATHER AN ADDITION TO THE MARKET.

8. THE FEDERAL GOVERNMENT BELIEVES THAT IN ORDER TO PREVENT INVESTMENT COMPANIES FROM ORGANIZING UNDER THE LAWS OF FOREIGN COUNTRIES WHOSE REGULATIONS ARE LEAST RESTRICTIVE, THE SEC COULD IN DECIDING ON THE APPLICATION OF A FOREIGN COMPANY TO SELL IN THE UNITED STATES TAKE INTO ACCOUNT THE REGULATIONS OF THAT COMPANY UNDER THE LAWS OF ITS COUNTRY OF ORIGIN. THE GERMAN AUTHORITIES FOLLOW THIS PRACTICE. THE SEC THUS COULD DENY PERMISSION TO COMPANIES WHO UNDER THE LAWS OF THEIR COUNTRY OF ORIGIN ARE NOT PROVIDING THE DEGREE OF SECURITY AND PROTECTION CALLED FOR BY THE OECD GUIDELINES.
HILLENBRAND

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SECURITIES, FOREIGN INVESTMENT CONTROLS, INVESTMENT CO ACT OF 1940
Control Number: n/a
Copy: SINGLE
Draft Date: 07 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BONN02156
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750045-0920
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750264/aaaacffp.tel
Line Count: 206
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 STATE A-9155, 75 DECEMBER 13, 75 1974
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 21 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <21 APR 2003 by MarshK0>; APPROVED <15 JAN 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FOREIGN ACCESS TO U.S. SECURITIES MARKET: GERMAN GOVERNMENT COMMENTS ON STANDARDS OF
TAGS: EFIN, GE, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006